S.B.CIVIL WRIT PETITION NO.4265/2006
(Rajasthan Mahila Parishad Vs. Appellate Rent Tribunal & ors.)

DATED : 3rd September 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Manish Shishodia for the petitioner

Reportable

The petitioner Rajasthan Mahila Parishad, Udaipur, said to be a society registered under the Rajasthan Societies Registration Act, 1958 and a public trust registered under the Rajasthan Public Trusts Act, 1959 and a recognised educational institution under the Rajasthan Non-Government Educational Institutions Act, 1989 receiving 90% government aid, opposed an application made by its landlords under Section 6 of the Rajasthan Rent Control Act, 2001 ('the Act' / 'the Act of 2001') for revision of rent in relation to the premises let to it, essentially on the ground that it being a registered society, a registered public trust, and a government aided institution, the provisions contained in Chapters II and III of the Act do not apply for the exclusion provided in clauses (viii) and (iv) of its Section 3. The petitioner-tenant also contended that the rent was fixed as per the assessment made by the Public Works Department of the Government of Rajasthan; and that the State of Rajasthan was a necessary party in whose absence, the matter could not be proceeded with.

The learned Rent Tribunal by its order dated 09.02.2004 (Annex.10) considered and rejected the basic submission of the petitioner about exclusion of Chapters II and III of the Act with reference to clauses (viii) and (iv) of Section 3 of the Act with the finding that the premises in question belong to the private persons and the provisions referred by the petitioner apply in relation to the premises belonging to or of the ownership of certain trusts or bodies; and the petitioner being only a tenant, exclusion clauses do not apply.

Thereafter, by its order dated 29.07.2004 (Annex.12) the Tribunal proceeded to revise the rent taking the basic rent at Rs.800/- per month as on 15.07.1982 and determined the same as per the provisions of Section 6 of the Act at Rs.2,634/- per month as on 15.07.2003 and directed payment of revised rent from the date of filing of the application i.e., 18.08.2003.

Taking an appeal, the petitioner contended before the Appellate Rent Tribunal, Udaipur that it being 90% aided institution, for all practical purposes the enhanced rate shall be payable by the State Government; and that as per Section 3 of the Act, the petitioner being an educational institution, the provisions of Chapters II and III are not applicable to it. The learned Appellate Rent Tribunal has observed that the solitary question was as to whether or not the exclusion provisions are

applicable where the individuals rented out the premises to such educational institutions. The Appellate Rent Tribunal has referred to the relevant clauses of Section 3 of the Act and has rejected the contention of the petitioner with the observation that various clauses of Section 3 use different expressions, namely "belonging to", "let out by" and "let to"; and that, for the context, meaning of these words is clear; that the phrase ‘belonging to’ denotes something more than simple tenancy and somewhat towards ownership; that ‘let out’ means the persons who created tenancy; and that the phrase ‘let to’ refers to the tenant. The Appellate Tribunal has observed that the premises let to the appellant are not covered under Section 3 of the Act; and, while endorsing the decision of the Rent Tribunal, has dismissed the appeal. Hence this writ petition.

Learned counsel Mr.Manish Shishodia appearing for the petitioner-tenant has strenuously contended that the concept of ownership cannot be imported into the words ‘belonging to’ as used in various clauses of Section 3 of the Act; and that, in their context, words are required to be given wide meaning and when the premises are let to the Trust or the Institution like the petitioner, the provisions contained in Chapters II and III would not apply for such exclusion clauses as contained in Section 3 of the Act. Learned counsel submitted that the

petitioner is a notified Trust and in the circumstances of the case, no application for revision of rent was competent under the Act of 2001. Learned counsel also contended that the petitioner being an aided institution, the State Government was a necessary party to the proceedings.

Having examined the scheme of Section 3 of the Act of 2001, this Court is clearly of opinion that the submissions made on behalf of the petitioner remain wholly baseless and deserve to be rejected.

Section 3 of the Act of 2001, which excludes certain premises and tenancies from operation of Chapters II and III of the Act, reads thus:

> **3. Chapter II and III not to apply to certain premises and tenancies.-** Nothing contained in Chapter II and III of this Act shall apply,-
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> (i) to the new premises built or completed after the commencement of this Act and let out through a registered deed in which date of completion of such premises is mentioned;
>
> (ii) to the premises existing at the commencement of this Act, if let out after such commencement for a period of five years or more through a registered deed and the tenancy is not terminable before expiry of its duration at the option of the landlord;
>
> (iii) to any premises let out for residential purposes before or after the commencement of this Act, the monthly rent whereof is-
>
> (a) rupees seven thousand or more, in the case of the premises situated in the municipal area of Jaipur city;

(b) rupees four thousand or more, in the case of premises let out at places situated in the municipal areas comprising the Divisional Headquarters Jodhpur, Ajmer, Kota, Udaipur and Bikaner;

(c)rupees two thousand or more, in case of premises let out at places situated in other municipal areas to which this Act extends for the time being;

(iv) to any premises belonging to or let out by the Central Government or the State Government or a local authority;

(v) to any premises belonging to or let out by any body corporate constituted by a Central Act or a Rajasthan Act;

(vi) to any premises belonging to a Government company as defined under section 617 of the Companies Act, 1956 (Central Act No.1 of 1956);

(vii) to any premises belonging to the Devasthan Department of the State, which are managed and controlled by the State Government or to any property of a Wakf, registered under the Wakf Act, 1995(Central Act No.43 of 1995);

(viii) to any premises belonging to such religious, charitable or educational trust or class of such trusts as may be specified by the State Government by notification in the Official Gazette;

(ix) to any premises belonging to or vested in a University established by any law for the time being in force;

(x) to any premises let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or multinational companies, and private limited companies or public limited companies having a paid up share capital of rupees one crore or more;

Explanation.- For the purpose of this clause the expression "bank" means,-

(i) the State Bank of India constituted under the State Bank of India Act,1955 (Central Act No.23 of 1955);

(ii) a subsidary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959(Central Act No.38 of 1959);

(iii)a corresponding new bank constituted under section 3 of the Banking Copanies (Acquisitoin and Transfer of Undertakings) Act, 1970 (Central Act No.5 of 1970) or under section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act,1980 (Central Act No.40 of`1980);

(iv) any other bank, being a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (Central Act No.2 of 1934); and

(xi) to any premises let out to a citizen of a foreign country or to an embassy, High Commission, Legation or other body of a foreign State, or such international organisation as may be specified by the State Government by notification in the Official Gazette."

The Act of 2001 has been enacted to provide for control of eviction from, letting of, and rents for certain premises in the State of Rajasthan and matters incidental thereto (vide the Preamble) while repealing its forerunner, the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. The words ‘belonging’ or ‘let’ have not been defined in the Act, but obviously for the Act dealing with letting of, and rents for, the premises, a few of the basic ingredients of such transaction may be taken into comprehension while looking at the contextual meaning of the expressions ‘belonging to’ and ‘let to’. The action of letting out being the fundamental cause

bringing into operation the Act of 2001; and 'lease' means a lease as defined in the Transfer of Property Act, 1882, one may for the purpose of the definition of lease, lessor, lessee, rent etc. refer to Section 105 of the Transfer of Property Act that reads thus:

> **"105. Lease defined.-** A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.
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> **Lessor, lessee, premium and rent defined.**- The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."

Thus, the essential elements of a lease of immovable property are: the parties; the subject matter i.e., the property; the demise of the property; the term or period of demise; and the consideration, or the rent.

The parties to a lease are essentially the lessor, who transfers a right to enjoy the demised property on a consideration; and the lessee, who accepts the transfer on such terms. The concept of ownership as such is not of the essentials for the purpose of a lease; the essential one is the right to enjoy the property that is transferred; and it is the transferor of such right to enjoy the property who is entitled to

receive the consideration (the rent). In the context of rent control enactments like the Act of 2001, the liability to pay rent and the right to receive such rent being of vital importance, and rather the core of the relationship, usually, the lessor is called ‘landlord’; and the word ‘tenant’ means a lessee especially when used in opposition to the landlord. The definition, however, of ‘landlord’ in the Act of 2001 is of wide amplitude, wherein a person receiving rent on other’s behalf and even the person with potential right to receive the rent is also included. The expression ‘landlord’ has been defined in the Act as,-

> **“landlord”** means any person who for the time being is receiving or is entitled to receive the rent of any premises, whether on his own account or as an agent, trustee, guardian or receiver for any other person, or who would so receive or be entitled to receive the rent, if the premises were let to a tenant;"

And the meaning of the expression ‘tenant’ so far relevant to the present purpose as given in the enactment is,-

> **“tenant”** means-
>
> (i) the person by whom or on whose account or behalf rent is, or but for a contract express or implied, would be payable for any premises to his landlord including the person who is continuing in its possession after the termination of his tenancy otherwise than by an order or decree for eviction passed under the provisions of this Act; and
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> (ii) xxx xxx xxx"

Now, a comprehensive look at Section 3 of the Act makes it clear that applicability of Chapters II and III of the Act of 2001 has been taken out in relation to certain premises and certain tenancies. Clause (i) of Section 3 applies in relation to such subject matter, the premises, that are demised through a registered deed mentioning the date of completion when the premises are built or completed after commencement of the Act. Clause (ii) concerns with the period of demise through a registered deed after commencement of the Act for a period of five years or more. Clause (iii) relates to the demise for residential purposes with reference to the quantum of consideration i.e., the monthly rent, and situs of the property. These three clauses relate essentially to the terms of the transaction.

On the other hand, clauses (iv) to (xi) are concerned with the subject matter i.e., the property in question coupled with the parties to the transaction i.e., the lessor or the lessee, or for that matter, the landlord or the tenant. In these clauses, the basis of exclusion has been spelt out for the reason of: first, the premises belonging to or let out by certain specified entities; secondly, the premises belonging to some of the entities; and thirdly, the premises let to some specified entities. While clause (iv) refers to the premises belonging to or let out by the Central Government or the State Government or a local

authority, clause (v) refers to the premises belonging to or let out by any body corporate constituted by a Central Act or a Rajasthan Act . Clauses (vi), (vii), (viii) and (ix) deal with the premises **belonging** respectively: to a Government company; to the Devasthan Department of the State which are managed and controlled by the State Government; to any property of a Wakf, registered under the Wakf Act, 1995; to such religious, charitable or educational trust or class of such trusts as may be specified by the State Government by notification in the Official Gazette; and to, or vested in, a University. Clause (x) refers to the premises let to the banks, meaning whereof has been explained thereunder, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or the Companies having paid up share capital of rupees one crore or more. Clause (xi) refers to the premises let out to the citizens of a foreign country or to an embassy, High Commission or International Organisation etc., as may be specified by the State Government by notification.

A plain reading of the provisions makes it clear that the phrase “belonging to” has specifically been used in the said clauses in contradistinction to the phrases “let out to” or “let to”. The words “let out by” occurring in clauses (iv) and (v) take their colour from the words preceding i.e., “belonging to”; and make it clear that any premises which are either

belonging to or are otherwise let out by the Government, Local Authority or Statutory Bodies shall be covered thereunder. Clauses (vi) to (ix) deal with the premises ‘belonging to’ the entities specified therein. The expression ‘belonging to’ in such clauses, even if not equivalent to ownership, definitely connotes the meaning that is referable to fundamental traces of ownership and imports the concept of ownership, though not necessarily of absolute ownership. It refers to the person who may transfer the right of enjoyment of property and who or on whose behalf rent could be recovered. It refers, obviously, to the landlord; and not the tenant.

The requirement of such an expression like ‘belonging to’ could be readily noticed from the broad definition of landlord as reproduced hereinbefore; and further from the fact that the clauses aforesaid are dealing essentially with juristic persons where the person calling to the definition of landlord may be even different than the owner, like an agent or a trustee. Nevertheless, the expression ‘belonging to’ does not refer to the tenant at all but refers to the landlord in the context of relationship of landlord and tenant; or to the lessor in wider connotation of 'lease' of immovable property. The obvious meaning is that the provisions of Chapter II and III shall not apply in relation to the premises which belong to the entities specified in clauses (vi) to (ix); that is the premises of which

the 'landlord' or 'the lessor' are the entities specified therein.

The basic feature that clauses (vi) to (ix) of Section 3 are not referring to the tenants comes to the fore from the next two clauses i.e., clauses (x) and (xi) wherein exclusion has been provided specifically with reference to the lessee/tenant, that is the person or entity to whom the premises have been let to. In other words, it could be said that Chapters II and III do not apply when premises are let to the entities mentioned in clause (x) and (xi).

A comprehensive reading of the clauses makes it clear that clause (viii) so heavily relied upon by the petitioner has no application whatsoever to the present case as the premises in question belong to the private individuals, the landlords who are entitled to receive the rent and who have moved application for revision of rent. The premises have, of course, been let to the petitioner said to be a registered society, a registered trust and an aided institution, however, the premises do not belong to the petitioner. It is nowhere found in the aforesaid provisions that Chapter II and III would not apply in relation to the premises wherein any entity like the petitioner is a tenant.

Though there is no room for any doubt that clause (viii) does not apply to the petitioner, yet for further clarification, one may look at the Hindi Text of the enactment. It may be

pointed out that the provisions as quoted above of Section 3 of the Act are from the authorised English Translation of राजस्थान किराया नियंत्रण अधिनियम, 2001. The phraseology used in the enactment made in Hindi language reads thus:

> **"3.** अध्याय **2** और **3** का कतिपय परिसरों और किरायेदारियों को लागू न होना**.-** इस अधिनियम के अध्याय 2 और 3 में अंतर्विष्ट कोई भी बात निम्नलिखित को लागू नहीं होगी:-
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> (i) इस अधिनियम के प्रारम्भ के पश्चात् निर्मित या पूर्ण हुए और किसी रजिस्ट्रीकृत विलेख, जिसमें पूर्ण होने की तारीख उल्लिखित हो, के जरिये किराये पर दिये गये नये परिसरों को;
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> (ii) इस अधिनियम के प्रारम्भ पर विद्यमान परिसरों को, यदि वे ऐसे प्रारम्भ के पश्चात् रजिस्ट्रीकृत विलेख के जरिये पांच वर्ष या अधिक की कालावधि के लिए किराये पर दिये गये हों और किरायेदारी उसकी अवधि की समाप्ति के पूर्व भू-स्वामी के विकल्प पर समाप्य नहीं हो;
>
> (iii) इस अधिनियम के प्रारम्भ के पूर्व या पश्चात् निवासीय प्रयोजनों के लिए किराये पर दिये गये ऐसे किन्हीं भी परिसरों को, जिनका मासिक किराया,-
>
> (क) जयपुर नगर के नगरपालिक क्षेत्र में अवस्थित परिसरों की दशा में सात हजार रूपये या अधिक हो ;
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> (ख) खण्ड मुख्यालय जोधपुर, अजमेर, कोटा, उदयपुर और बीकानेर में के नगरपालिक क्षेत्रों में अवस्थित स्थानों पर के परिसरों को किराये पर दिये जाने की दशा में चार हजार रूपये या अधिक हो ;
>
> (ग) अन्य नगरपालिक क्षेत्रों में, जिनमें इस अधिनियम का तत्समय प्रसार हो, अवस्थित ऐसे स्थानों पर के परिसरों को किराये पर दिये जाने की दशा में दो हजार रूपये या अधिक हो;
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> (iv)केन्द्रीय सरकार या राज्य सरकार या किसी स्थानीय प्राधिकरण के या उनके द्वारा किराये पर दिये गये परिसरों को;
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> (v)किसी केन्द्रीय अधिनियम या राजस्थान अधिनियम द्वारा गठित किसी भी निगमित निकाय के या उसके द्वारा किराये पर दिये गये किन्हीं परिसरों को;

(vi) कम्पनी अधिनियम,1956 (1956 का केन्द्रीय अधिनियम सं.1) की धारा 617 में यथापरिभाषित किसी सरकारी कम्पनी के किन्हीं परिसरों को;

(vii) राज्य के देवस्थान विभाग के किन्हीं भी परिसरों को जिनका प्रबन्ध और नियंत्रण राज्य सरकार द्वारा किया जाता है, या वक्फ अधिनियम,1995 (1995 का केन्द्रीय अधिनियम सं. 43) के अधीन रजिस्ट्रीकृत किसी भी वक्फ की किसी भी सम्पति को;

(viii) किन्हीं ऐसे परिसरों को, जो किसी ऐसे धार्मिक, पूर्त या शैक्षणिक न्यास के या ऐसे न्यासों के वर्ग के हों, जिन्हें राज्य सरकार द्वारा, राज-पत्र में अधिसूचना द्वारा, विनिर्दिष्ट किया जाये;

(ix) किन्हीं भी ऐसे परिसरों को, जो तत्समय प्रवृत किसी भी विधि द्वारा स्थापित किसी विश्वविद्यालय के हों या उसमें निहित हों;

(x) किन्हीं भी ऐसे परिसरों को जो बैंकों, या किसी केन्द्रीय या राज्य अधिनियम के द्वारा या अधीन स्थापित किसी भी पब्लिक सेक्टर उपक्रम या किसी भी निगम को या बहुराष्ट्रीय कम्पनियों को और एक करोड़ रूपये या उससे अधिक की समादत्त शेयर पूंजी वाली प्राइवेट लिमिटेड कम्पनियों या पब्लिक लिमिटेड कम्पनियों को, किराये पर दिये गये हों;

स्पष्टीकरण:- इस खण्ड के प्रयोजन के लिए अभिव्यक्ति "बैंक" से अभिप्रेत है,-

(i) भारतीय स्टेट बैंक अधिनियम,1955 (1955 का केन्द्रीय अधिनियम सं. 23) के अधीन गठित भारतीय स्टेट बैंक;

(ii) भारतीय स्टेट बैंक (समनुषंगी बैंक) अधिनियम,1959 (1959 का केन्द्रीय अधिनियम सं. 38) में यथापरिभाषित कोई समनुषगी बैंक;

(iii) बैंककारी कम्पनी (उपक्रमों का अर्जन और अन्तरण) अधिनियम,1970 (1970 का केन्द्रीय अधिनियम सं.5) की धारा 3 के अधीन या बैंककारी कम्पनी (उपक्रमों का अर्जन और अन्तरण) अधिनियम,1980 (1980 का केन्द्रीय अधिनियम सं. 40) की धारा 3 के अधीन गठित कोई तत्स्थानी नया बैंक,

(iv) कोई भी अन्य बैंक जो भारतीय रिजर्व बैंक अधिनियम,1934 (1934 का केन्द्रीय अधिनियम सं.2) की धारा 2 के खण्ड (ङ) में यथापरिभाषित अनुसूचित बैंक हो; और

(xi) ऐसे किन्हीं परिसरों को जिन्हें किसी विदेशी नागरिक या किसी विदेशी राज्य के किसी राजदूतावास, उच्चायोग, दूतावास या किसी अन्य निकाय को या ऐसे अन्तर्राष्ट्रीय संगठन को, जिसे राज्य सरकार द्वारा राज-पत्र में अधिसूचना द्वारा विनिर्दिष्ट किया जाये, किराये पर दिया गया हो।"

It may be noticed that phrase “belonging to or let out by” reads in Hindi language “के या उनके/ उसके द्वारा किराये पर दिये गये" per clauses (iv) and (v); then, clauses (vi) to (ix) use the expression belonging to in the words “के हों"; and clauses (x) and (xi) refer to such premises, “परिसरों को", which have been let to the specified persons or entities in the words“किराये पर दिये गये हों/किराये पर दिया गया हो".

The petitioner is a tenant and is an entity to whom the premises have been rented out. In relation to the party to the transaction who stands in the capacity of lessee or tenant, only the clauses (x) and (xi) are applicable, and the petitioner does not answer to the description of any of the entities stated therein.

In Clause (viii), so strongly relied upon by the petitioner, the expression “belonging to” refers to only the lessor, or to the landlord, or to the owner, by whatever description required to be called in view of the terms of transaction and the requirements of context; but in any case it does not refer to the lessee or the tenant like the petitioner. In the present context one could only say that the premises in question have

been let to the petitioner; and, this court is clearly of opinion that it would be wrong, rather preposterous, to say that the premises belong to the petitioner!

Suffice is to conclude in one sentence that the expression “belonging to” in Section 3 does not refer to the tenant but refers only to the landlord.

The learned Rent Tribunal and so also learned Appellate Rent Tribunal were perfectly justified in rejecting the baseless contention of the petitioner.

The other submission that the petitioner is also a notified trust has got no relevance or bearing on the operation of Section 6 of the Act. Yet another submission that the State Government was a necessary party is totally baseless. The relationship of landlord and tenant essentially exists between the petitioner and the landlord; and whether the petitioner is aided by the State Government and whether part of burden on revision of rent would be borne by the State Government while aiding the institution have nothing to do with the rights of the landlord to claim revision of rent with reference to the tenancy in question.

There is no merit in this writ petition and the same is, therefore, dismissed summarily.

(DINESH MAHESHWARI),J.

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